

### **REMARKS**

Applicant thanks the Examiner for the thorough consideration given the present application. Claims 1, 2 and 5-11 are currently being prosecuted. The Examiner is respectfully requested to reconsider the rejections in view of the Amendments and Remarks as set forth hereinbelow.

### **CLAIM FOR PRIORITY**

It is gratefully acknowledged that the Examiner has recognized the Applicant's claim for foreign priority. In view of the fact that the Applicant's claim for foreign priority has been perfected, no additional action is required from the Applicant at this time.

### **DRAWINGS**

It is gratefully acknowledged that the Examiner has approved the Formal Drawings submitted by the Applicant. The drawings comply with the requirements of the USPTO. No further action is necessary.

### **ACKNOWLEDGEMENT OF INFORMATION DISCLOSURE**

#### **STATEMENT**

The Examiner has acknowledged the Information Disclosure Statement filed on May 11, 2006. An initialed copy of the PTO/SB/08A has been received from the Examiner. No further action is necessary at this time.

### **OBJECTION TO THE CLAIMS**

Claims 1-5, 9 and 11 stand objected to based on informalities.

As the Examiner will note:

Claim 1, line 4 now refers to a front and rear pair of carriage wheels;

Claim 2, line 3 is now proper in view of the corrections to claim 1;

Claim 3 has been cancelled and the subject matter added to claim 1. The word "said" is not included in the changes to claim 1 based on adding the subject matter of claim 3;

Claim 5, lines 2 and 3 have been corrected as suggested by the Examiner;

Claim 9, line 5 has been corrected as suggested by the Examiner;

Claim 11, line 3 has been corrected as suggested by the Examiner;

Claim 11, line 5 has been corrected as suggested by the Examiner.

Applicant has complied with the Examiner's suggestions with regard to overcoming the informalities in the language set forth in the claims.

### **REJECTION UNDER 35 USC 102**

Claims 1, 3, 8, 9 and 11 stand rejected under 35 USC 102 as being anticipated by Lewis, US 3,454,123. This rejection is respectfully traversed.

At the outset, claim 1 has been amended to include the subject matter of claims 3 and 4. Claim 4 was not rejected under 35 USC 103 based on the Lewis patent. In view of the amendments to claim 1 to include the subject matter of claims 3 and 4, Applicant has overcome the Examiner's rejection under 35 USC 102. In addition, as set forth in Section

2131 of the MPEP Original Eight Edition, August 2001 Latest Revision February, 2003,  
page 2100-70:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. Of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).... “The identical invention must be shown in as complete detail as is contained in the ... claims.” *Richardson v. Suzuki Motor Co.*, 868 F2d 1226, 1236, 9 USQP2d 1913, 1920 (Fed. Cir. 1989).

It is respectfully submitted that the prior art cited by the Examiner does not set forth each and every element as defined in the claims. Thus, the Examiner’s rejection based on 35 USC 102 has been obviated.

#### **REJECTION UNDER 35 USC 103**

Claims 2, 3, 5, 7 and 10 stand rejected under 35 USC 103 as being unpatentable over Lewis in view of Klun et al, US 6,299,187. Claim 4 stands rejected under 35 USC 103 as being unpatentable over Lewis in view of Steiner, US 3,591,203. Claims 4, 6 and 7 stand rejected under 35 USC 103 as being unpatentable over Lewis in view of Klun et al and further in view of Steiner. These rejections are respectfully traversed.

As acknowledged in the Examiner’s Office Action:

Page 3, paragraph 5, Lewis does not disclose a turntable that is located between one of at least one said driven pair of wheels and the subframe ... Lewis does not disclose that the main chassis includes a pair of said drivable steer carriages located adjacent opposing ends of the main chassis.

Page 4, paragraph 6, Lewis ... does not disclose that there is a middle non-driven pair of carriage wheels located between the front and rear driven pairs of carriage wheels, the axis of rotation of the middle pair being located below the input shaft.

Page 4, paragraph 7, Lewis and Klun et al ... does not disclose that there is a middle non-driven pair of carriage wheels located between the front and rear driven pairs of carriage wheels, the axis of rotation of the middle pair being located below the input shaft.

As the Examiner will note, claim 1 has been amended to set forth a combination of elements wherein:

A vehicle includes a main chassis and a power source for driving the vehicle with a drivable steer carriage pivotally supporting the main chassis about an at least substantially upright pivotal axis. The carriage includes front and rear opposed pairs of carriage wheels with the front and rear pair of carriage wheels being respectively driven by a drive transmission including an input shaft at least substantially aligned with said upright pivotal axis such that the power source can transfer power through the input shaft to at least one carriage wheel pair. A middle non-driven pair of carriage wheels are located between the front and rear driven pairs of carriage wheels, wherein the axis of rotation of said middle pair is located below the input shaft.

It is respectfully pointed out that the Lewis patent does not provide a disclosure of a middle non-driven pair of carriage wheels located between said front and rear driven pairs of carriage wheels, wherein the axis of rotation of said middle pair is located below the input shaft as now claimed in amended claim 1. The principal advantage provided by the middle

pair of carriage wheels is that it improves the load bearing capacity of the carriage. The use of three pairs of carriage wheels provide a better payload and make the drivable steer carriage an alternative to a prime mover or "tractor."

The Examiner relied on the Steiner patent for a disclosure of a middle non-driven pair of carriage wheels. However, there is no disclosure in Steiner of the use of a middle non-driven pair of carriage wheels on a steer carriage, wherein the axis of rotation of the middle pair is located below the input shaft. The prior art does not disclose a middle pair of carriage wheels that is non-driven and located below the input shaft to help to also reduce or eliminate lateral skidding and/or scuffing to all of the wheels which would otherwise lead to tread wear and have a detrimental effect on the steerability of the vehicle.

The Klun et al patent was relied on for a disclosure for providing the use of a pair of drivable steering carriages located adjacent to opposing ends of the main chassis. Since the Klun et al patent does not overcome the deficiencies of the primary reference to render obvious the subject matter set forth in the amended claims, the Examiner's rejection has been obviated.

As the Examiner knows, to establish a *prima facie* case of obviousness, three basic criteria must be met.

- 1.) First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- 2.) Second, there must be a reasonable expectation of success.
- 3.) Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

As set forth in section 2143 of the M.P.E.P., the following are examples of basic requirements of a *prima facie* case of obviousness:

“The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper “functional approach” to the determination of obviousness as laid down in *Graham*. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.”

One of these exemplary rationales that may support a conclusion of obviousness set forth in subparagraph “C” relates to use of known technique to improve similar devices (methods, or products) in the same way.

“To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Then, Office personnel must articulate the following:

(1) a finding that the prior art contained a “base” device (method, or product) upon which the claimed invention can be seen as an “improvement;”  
(2) a finding that the prior art contained a “comparable” device (method, or product that is not the same as the base device) that has been improved in the same way as the claimed invention;

(3) a finding that one of ordinary skill in the art could have applied the known “improvement” technique in the same way to the “base” device (method, or product) and the results would have been predictable to one of ordinary skill in the art; and

(4) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that a method of enhancing a particular class of devices (methods,

or products) has been made part of the ordinary capabilities of one skilled in the art based upon the teaching of such improvement in other situations. One of ordinary skill in the art would have been capable of applying this known method of enhancement to a "base" device (method, or product) in the prior art and the results would have been predictable to one of ordinary skill in the art. The Supreme Court in *KSR* noted that if the actual application of the technique would have been beyond the skill of one of ordinary skill in the art, then using the technique would not have been obvious. *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art. (*emphasis added*)

The Applicant respectfully submits that the Examiner has failed to articulate each and every one of items (1) to (4) above as is required.

In view of the above, the Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness.

Therefore, claims 1, 2 and 5-11 are in condition for allowance.

#### **NO PROSECUTION HISTORY ESTOPPEL**

Claims 3 and 4 have been added to claim 1 to clarify the claim language. No prosecution history estoppel would apply to the interpretation of the limitations set forth in claims 1, 2 and 5-11 in view of the fact that this subject matter has been continuously presented since the original filing date of the present application.

### **REQUEST FOR INTERVIEW**

If the Examiner has any questions with regard to this application please contact the undersigned so that an interview can be arranged in connection with this application.

### **CONCLUSION**

In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination.

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but to merely show the state of the art, no comment need be made with respect thereto.

In view of the above amendments and remarks, reconsideration of the rejections and allowance of all of the claims are respectfully requested.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. It is respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. A full and complete response has been made to the outstanding Office Action. The present application is now in condition for allowance.

A prompt and favorable consideration of this Amendment is respectfully requested.

Pursuant to the provisions of 37 CFR 1.17 and 1.136(a), Applicant respectfully petitions for a one (1) month extension of time for filing a response in connection with the present application. The required fee is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: September 28, 2009

Respectfully submitted,

By 

James M. Slattery

Registration No.: 28,380

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant